

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
GEORGIA BRUNSWICK DIVISION

DONJON-SMIT, LLC

VS.

**ADMIRAL KARL L. SCHULTZ, CAPTAIN
JOHN W. REED, COMMANDER NORM C.
WITT, and COMMANDER MATTHEW J.
BAER, IN THEIR OFFICIAL CAPACITY
AS OFFICERS OF THE UNITED STATES
COAST GUARD**

**CIVIL ACTION NO. 2:20-cv-
00011 L:GB-BWC**

**DONJON-SMIT, LLC’S SUPPLEMENTAL
PROPOSED CONCLUSIONS OF LAW**

Plaintiff, Donjon-SMIT, LLC, submit the following supplemental proposed conclusions of law in connection with Plaintiff’s motion for preliminary injunction. Dkt. No. 6

MANDAMUS

Under 28 U.S.C. § 1361, “[t]he district court shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency therefor to perform a duty owed to the plaintiff.” The purpose of 28 U.S.C. § 1361 is to prevent federal officials from acting outside the permissible scope of their discretion, and it seeks to prevent such abuse by giving federal courts the authority to compel federal officials to perform acts required of them or, conversely, to refrain from acts which they are not authorized to perform.

Here, Defendants failed to abide by 33 C.F.R. § 155.4032, which states that a FOOSC may only approve the use of a resource provider not listed in the NTVRP “under exceptional circumstances” where such approval “would best affect a more successful response.”

Additionally, Defendants failed to abide by 33 U.S.C.A. § 1321(c)(3)(B), which states that a FOSC may only deviate from the applicable NTVRP if he determines that the “deviation from the NTVRP would provide for a more expeditious or effective response to the spill or mitigation of its environmental effects.”

Instead, Defendants, without justification, without evidence of “exceptional circumstances,” and acting arbitrarily, capriciously and in bad faith, approved Owner’s deviation from the NTVRP. Donjon-SMIT has a clear right to relief that is sought in this Complaint, and there is no other adequate remedy available to Donjon-SMIT.

This 28th day of February 2020.

Respectfully submitted,

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph R. Odachowski

Georgia State Bar No. 549470

Peter H. Schmidt, II

Georgia State Bar No. 629512

300 Oak Street, Suite 200

St. Simons Island, GA 31522

(912) 634-0955 – Telephone

(912) 638-9739 – Facsimile

jodachowski@tosclaw.com

**ATTORNEYS FOR PLAINTIFF
DJS, LLC**

**OF COUNSEL:
CLARK HILL PLC**

/s/ Garney Griggs

Garney Griggs

Texas State Bar No. 08491000

Clifford Bowie Husted

Texas State Bar No. 00796803

Gregorio Flores

Texas State Bar No. 24116367

909 Fannin, Suite 2300

Houston, TX 77010

(713) 951-5600 – Telephone

(713) 951-5660 – Facsimile

ggriggs@clarkhill.com

hustedc@clarkhill.com

gflores@clarkhill.com

**ATTORNEYS FOR PLAINTIFF
DJS, LLC**

CERTIFICATE OF SERVICE

This hereby certifies that on this day, I electronically filed the *Plaintiff DJS, LLC'S Supplemental Conclusions of Law* with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to the following attorneys of record:

Martha C. Mann, Esq. Sydney A. Menees, Esq. UNITED STATES DEPARTMENT OF JUSTICE Environmental & Natural Resources Division Post Office Box 7611 Washington, DC 20044 Martha.mann@usdoj.gov Sydney.menees@usdoj.gov	Bradford C. Patrick, Esq ASSISTANT UNITED STATES ATTORNEY Post Office Box 8970 Savannah, Georgia 31412 Bradford.patrick@usdoj.gov
---	---

This 28^h day of February 2020.

**TAYLOR, ODACHOWSKI, SCHMIDT &
CROSSLAND, LLC**

/s/ Joseph R. Odachowski

Joseph R. Odachowski

Georgia State Bar No: 549470

Peter H. Schmidt, II

Georgia State Bar No. 629512

300 Oak Street, Suite 200
St. Simons Island, GA 31522
(912) 634-0955 – Telephone
(912) 638-9739 – Facsimile
jodachowski@tosclaw.com